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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 19, 2004

DAVID A. O'CONNOR
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VIA HAND DELIVERY

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Attention: Media Bureau

Re: Amendment of Section 73.202(b), Table of Allotments,
FM Broadcast Stations, Channel 244C2, Walnut Grove, MS
Petition for Reconsideration

Dear Ms. Dortch:

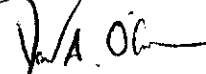
Transmitted herewith, on behalf of Crossgates Baptist Church, are an original and four (4) copies of its Petition for Reconsideration of the Audio Division's March 18, 2004 Letter Decision in the above-captioned proceeding.

An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier.

Should you have any questions, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor
Counsel for Crossgates Baptist Church

Enclosure

cc: John A. Karousos, Audio Division

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Amendment of Section 73.202(b)) RM _____
Table of Allotments,)
FM Broadcast Stations.) MB Docket No. _____
(Channel 244C2, Walnut Grove, Mississippi))

To: Chief, Media Bureau

PETITION FOR RECONSIDERATION

On November 21, 2003, Crossgates Baptist Church ("Crossgates") filed a Petition for Rule Making to amend the FM Table of Allotments in order to designate Channel 244C2 allotted to Walnut Grove, Mississippi as a reserved channel for noncommercial educational ("NCE") FM service.¹ In a Letter Decision dated March 18, 2004, the Audio Division returned the Petition for Rule Making as unacceptable for consideration.² For the reasons set forth below and in the attached Engineering Statement, Crossgates hereby respectfully requests that the Bureau reconsider the decision to return the Petition.

The Letter Decision indicates that "reserving the [Channel 244C2] allotment for NCE use would not provide a first or second NCE radio service to at least 10 percent of the population within the proposed service area." The Letter Decision

¹ The Petition was filed during the filing window announced by the Media Bureau. *See Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments, Public Notice*, 18 FCC Rcd 19,600 (Med. Bur. 2003).

² Letter from John A. Karousos, Assistant Chief, Audio Division, Media Bureau to David A. O'Connor, Counsel for Crossgates Baptist Church (Mar. 18, 2004).

does not specify the existing NCE radio services which preclude acceptance of the Petition.

Contrary to the Letter Decision, the attached Engineering Statement makes clear that Crossgates has satisfied the guidelines set forth in the Commission's *Second Report and Order*.³ Those guidelines require that a reservation proponent "establish the relative need for a new NCE service by demonstrating that maximum class facilities at the proposed allotment site would provide a first or second NCE service to at least ten percent of the population within the proposed station's service area and that such population is at least 2000 persons. The Commission will not reserve a particular allotment if this 'first or second service' criterion is not satisfied at the allotment site's reference coordinates."⁴

First, the Engineering Statement demonstrates that a reservation of Channel 244C2 at the allotment site's reference coordinates, using maximum class facilities, would provide a first or second NCE service to **13.1%** of the population within the proposed station's service area. Thus, the proposal meets, and even exceeds, the minimum 10% requirement set forth in the guidelines.

Second, the total population receiving first or second NCE service under this proposal would be 16,571 persons, well in excess of the 2000 persons required under the guidelines.

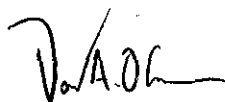
³ *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31, *Second Report and Order*, FCC 03-44, 18 FCC Rcd 6691 (rel. Apr. 10, 2003) ("*Second Report and Order*").

⁴ *Id.* para. 34.

Accordingly, Crossgates has complied with the guidelines set forth in the *Second Report and Order*, and submits that the Audio Division rejected the Petition in error. Crossgates therefore respectfully requests reconsideration of the Letter Decision.

Respectfully submitted,

CROSSGATES BAPTIST CHURCH



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Its Attorney

April 19, 2004

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ENGINEERING TECHNICAL STATEMENT PREPARED BY RYAN WILLOUR
OF THE FIRM KESSLER AND GEHMAN ASSOCIATES, INC.
TELECOMMUNICATIONS CONSULTING ENGINEERS IN SUPPORT OF A
PETITION FOR RECONSIDERATION TO RESERVE THE VACANT
COMMERCIAL FM CHANNEL 244C2 WALNUT GROVE, MS¹ ALLOTMENT BY
DEMONSTRATING A MAXIMIZED ALLOTTED FACILITY MEETS AND
EXCEEDS THE 10% AND 2,000 PERSON REQUIREMENT
PURSUANT TO THE SECOND REPORT AND ORDER RELEASED ON APRIL
10, 2003 IN THE MATTER OF REEXAMINATION OF COMPARATIVE
STANDARD FOR NONCOMMERCIAL EDUCATIONAL APPLICANTS.,
FCC 03-44.

The firm Kessler and Gehman Associates, Inc. has been retained by Crossgates Baptist Church to prepare engineering studies and the engineering portion of a Petition for Reconsideration ("PFR") to reserve the vacant commercial FM Channel 244C2 Walnut Grove, MS allotment.

Discussion

This PFR is in response to the returned petition for rulemaking to reserve the vacant channel 244C2 allocation for Walnut Grove, MS for NCE use. The Commission's letter Dated March 18, 2004 states:

"A staff engineering analysis reveals that your petition is unacceptable for consideration. Specifically, reserving the allotment for NCE use would not provide a first or second NCE radio service to at least 10 percent of the population within

¹ See Public Notice, No. 217 (Walnut Grove, MS, Ch. 244C2), Released Sept. 30, 2003)

the proposed service area. Therefore, we find that the reservation of vacant Channel 244C2 at Walnut Grove for NCE use is unwarranted."

Upon reexamination, a first or second NCE radio service area analysis was independently prepared pursuant to the guidelines specified in paragraph 34², of the Second Report and Order released on April 10, 2003 and is prepared as follows:

All NCE-FM allocations, licenses and /or construction permits which have 1 mV/m contour overlap with the maximized channel 244C2 Walnut Grove, MS allocation are demonstrated in Exhibit 1 by the blue contours. The single green contour represents the 1 mV/m contour of the maximized allocation. The red shading characterizes the area within the maximum class facility's 1 mV/M service contour having more than 2 overlapping 1 mV/m service contours from NCE-FM neighboring facilities.

The 2000 census population tally within the allotted 1 mV/m contour of the maximized allocation is 126,283 persons. The 2000 census population tally receiving first or second service is 16,571 persons³. The percentage of population within the proposed Walnut Grove, MS maximum facility 1 mV/m contour which would receive a first or second NCE-FM service is 13.1%. Thus, the Walnut Grove, MS maximized allotted facility meets the 10% and 2,000 person requirement.

² The Second Report and Order states: "In order to expedite new service and minimize burdens to prospective NCE applicants, we will use the following methodology to evaluate allotment reservation requests. A reservation showing must satisfy two distinct criteria. First, it must establish the relative need for a new NCE service by demonstrating that maximum class facilities at the proposed allotment site would provide a first or second NCE service to at least ten percent of the population within the proposed station's service area and that such population is at least 2000 persons. The Commission will not reserve a particular allotment if this "first or second service" criterion is not satisfied at the allotment site's reference coordinates."

³ The areas not shaded by red within the 1 mV/m contour of the maximized allocation

Conclusion

Pursuant to the technical preclusion procedures outlined in paragraph 34 of the Second Report and Order released on April 10, 2003, it is herein demonstrated that a maximized Walnut Grove facility meets the 10% and 2000 person requirement. It is respectfully requested that the Walnut Grove, MS Channel 244 Class C2 allotment be reconsidered for reserved non-commercial use.

Certification

I, Ryan Wilhour, declare and state that I am a graduate electrical engineer with a Bachelor of Science in Electrical Engineering and my qualifications are a matter of record with the Federal Communication Commission, and that I am an engineer in the firm of Kessler and Gehman Associates, Inc., and that firm has been retained by Crossgates Baptist Church to prepare the foregoing technical statement.

The foregoing technical statement and aforementioned engineering work are true and correct to the best of my knowledge. Executed on April 16, 2004.

KESSLER AND GEHMAN ASSOCIATES, INC.

A handwritten signature in black ink, appearing to read "Ryan Wilhour". The signature is written in a cursive, flowing style.

Ryan Wilhour

Telecommunications Consulting Engineer

